IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 21ST NOVEMBER 2006 / 30TH KARTHIKA 1928

WA.No. 1426 OF 2006()

AGAINST THE JUDGEMENT IN WPC.15822/2005

APPELLANT: RESPONDENTS IN W.P(C):

1. KERALA WATER AUTHORITY,
   REPRESENTED BY ITS MANAGING DIRECTOR,TRIVANDRUM.

2. EXECUTIVE ENGINEER,
   KERALA WATER AUTHORITY, COCHIN-682016.

3. THE ASST.EXECUTIVE ENGINEER,
   KERALA WATER AUTHORITY, PALLIMUKKU,COCHIN-682016.

SRI.M.DINESH, SC, KWA

RESPONDENTS: WRIT PETITIONERS:

1. SEBASTIAN JOHN KANDAMKUKLATHY TOWERS,
   40/1042, M.G. ROAD, ERNAKULAM-682011,
   REPRESENTED BY POWER OF ATTORNEY, PAUL JOHN.

2. JOHN FRANCIS,
   KANDAMKULATHY TOWERS, 40/1042, M.G. ROAD,
   ERNAKULAM-682011, REPRESENTED BY POWER OF ATTORNEY
   PAUL JOHN.

3. ANTHONY JOHN,
   KANDAMKULATHY TOWERS, 40/1042, M.G. ROAD,
   ERNAKULAM-682 011, REPRESENTED BY POWER OF
   ATTORNEY, PAUL JOHN.

ADV. SRI. S. SREEKUMAR.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 15/11/2006, THE COURT ON 21.11.2006, DELIVERED THE
FOLLOWING:

V.K. BALI, C.J. & P.R. RAMAN, J.

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W.A. NO. 1426/2006

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DATED THIS, THE 21ST DAY OF NOVEMBER, 2006.

J U D G M E N T

Raman, J.

This appeal arises out of the judgment rendered by the learned Single Judge in W.P.C. 15822/2005. Appellants are the respondents therein.

2. Respondents herein filed the writ petition who are joined owners of a multi-storied commercial building in Corporation of Cochin. Four water connections were provided to the building by the local authority and subsequently, in 1991 the Water Authority took over charge of the water supply within the limits of Cochin Corporation and accordingly allotted new consumer numbers for the above said connections. By Ext.P1 dated 16th October, 1992, petitioners submitted an application for disconnection of three of such water connections given in their premises and requested

to provide a meter for Consumer No. 2085 only and to increase the size of the connection pipe. They continued to remit water charges in respect of only one connection from which water was actually consumed. But Exts. P2 to P4 bills were issued demanding an aggregate amount of Rs. 12,13,552/- alleging to be the arrears payable by them in respect of the other three water connections pertaining to which they sought for disconnection as per Ext.P1. A further amount of Rs. 17,527/- was also demanded as per Ext.P5 from the other co-owners for the live connection. The appeal filed against the demand towards the three water connections covered by Ext.P1 letter was however, disposed of by Ext.P11 order with a direction to the authority to collect water charges from the consumers only up to October, 1993 and thereafter minimum charges from November, 1993 to the date of disconnection. Subsequently, as per Ext.P13 letter, petitioners were informed to remit water charges up to October, 1993 as per the actual water

meter reading and thereafter at the minimum reading. Challenging Exts. P2 to P5 and P11 and P13 orders, petitioners filed the writ petition.

3. The stand taken by the Water Authority was that the water connections in question remained alive, since proper application was not made by the petitioners. The learned Single Judge, after considering the rival contentions by the parties, held that the respondents did not deny or dispute the receipt of Ext.P1 application by which petitioners requested them to disconnect three water connections. If there was any defect in the said application, necessarily, the respondents could have informed the petitioners to submit an application in the prescribed form, if that was mandatory. No such communication is also issued by the respondents even after receipt of Ext.P1. The learned Single Judge, further noticed the fact that the respondents had no case that the petitioners had consumed any water from the three connections after 1992. It is a fact that petitioners had

remitted the charges due towards the 4th connection which remained alive though there was delay in remitting the amount. Regulation 9(d) and (e) of the Kerala Water Authority (Water Supply Regulations) 1991 was pressed into service by the respondents raising the contention that the owner or occupier who desires to have his connection disconnected, has to apply in a particular form to the Assistant Executive Engineer through a licensed Plumber along with a fee of Rs. 15 and disconnection charge of Rs. 50 besides remitting the due as on the date. But referring to Regulation No.14 of the Regulations as well as Regulation No.13, the learned Single Judge held that assessment of water charges can be made only on the basis of the actual consumption of water by the consumer. In a case where there is no consumption of water, the liability to pay water charges, that too, under the slab system, did not arise. In the above facts and circumstances, the learned Single Judge found that it will be unjust

to demand water charges and penalty for no fault of the petitioners especially when they have not consumed any water at all from the three connections and that the Water Authority is not entitled to recover any fine or penalty from the petitioners. Aggrieved thereby, the Water Authority has come up in appeal.

4. The appellants impugns the judgment of the learned Single Judge reiterating the contentions raised in the writ petition. We have carefully gone through the judgment and also considered the rival submissions made by the parties.

5. Undisputedly, the respondents have not consumed water from the three connections in question as is demonstrably clear from the finding of the learned Single Judge. Further, the receipt of Ext.P1 is not denied. No communication thereafter was issued by the appellants requiring the respondents to submit an application in any prescribed form, if Ext.P1 was otherwise defective and after lapse of a long period, the respondents

could not be mulcted with the liability to pay charges for water unconsumed by them on a technical ground that they had not submitted the application for disconnection in proper format.

We do not find any good reasons to interfere with the judgment of the learned Single Judge and we are in complete agreement with the finding rendered by the learned Single Judge. There is no merit in the writ appeal. Accordingly, it is dismissed.

V.K. BALI,
(CHIEF JUSTICE)

P.R. RAMAN,
(JUDGE)

knc/-